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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Performance Measurements and
Reporting Requirements
for Operational Support Systems,
Interconnection, and Operator Services
and Directory Assistance

CC Docket No. 98-56
RM-9101

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Summary

Most comments in response to the NPRM proclaim the need for effective procedures to monitor the availability of access to support functions of the incumbent local exchange carriers ("LECs").

GSA urges the Commission to give little weight to the assertions that reporting requirements, if any, should be general and aggregated in order to place minimal "burdens" on the incumbent LECs. As GSA notes, incumbent LECs are already collecting much of the data required to report OSS availability. Furthermore, geographically disaggregated reports are necessary to accurately gauge competitors' access to the local telecommunications infrastructure.

Contrary to claims by some incumbent LECs, the Commission has ample authority to adopt the proposed procedures. In fact, the monitoring and reporting procedures are necessary to implement the Telecommunications Act of 1996. The ruling by the Eighth Circuit court addressing the Commission's interconnection decision poses no barrier to OSS monitoring and reporting.

Several incumbent LECs assert that OSS standards should be developed only on the basis of negotiated agreements or deliberations by industry organizations. GSA urges the Commission to eschew these approaches. Reliance on negotiated agreements will produce a hodgepodge of rules, while deferral to industry organizations will needlessly delay OSS monitoring and reporting that is essential for local competition.

Finally, GSA urges the Commission to adopt recommendations by parties to strengthen the proposed monitoring and reporting procedures. These additions will effectively supplement GSA's previous recommendations for modifications that will motivate greater compliance by LECs and also expand the value of OSS reporting.

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**REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released on April 17, 1998.¹ In the NPRM, the Commission seeks comments and replies on procedures for determining whether new providers of local telecommunications services are able to access the support functions of incumbent local exchange carriers ("LECs") in a non-discriminatory, just and reasonable manner as prescribed by the Telecommunications Act of 1996.²

I. INTRODUCTION

The NPRM describes a system for documenting and reporting how efficiently competitors can access the support functions of incumbent LECs. In Comments filed

¹ CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking, released April 17, 1998.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

on June 1, 1998, GSA recommended that the Commission's proposed system be adopted as a model for state regulatory agencies. Also, GSA recommended that the proposed system be employed to provide minimum mandatory standards if state regulatory agencies do not act promptly. Moreover, GSA outlined several procedures to make the system more responsive to the needs of end users for open competition by providing specific economic incentives to incumbent LECs to provide efficient access to their competitors.

A diverse group of parties also submitted comments to address the Commission's proposals. These parties include:

- 10 incumbent LECs;
- 8 additional carriers, including facilities-based competitive LECs, resellers, interexchange carriers, and wireless carriers;
- 5 associations representing local exchange carriers; and
- 3 state regulatory commissions.

In these Reply Comments, GSA responds to the positions advanced by these parties.

II. COMMENTS IN RESPONSE TO THE NPRM PROCLAIM THE NEED FOR MONITORING AND REPORTING OSS ACCESS.

Most parties responding to the NPRM agree with GSA that effective procedures are required to monitor the ability of competitors to access the operations support systems ("OSS") of the incumbent LECs. The Competitive Telecommunications Association reports:

Local competition has been delayed because nondiscriminatory access to OSS is essential and has not been provided.³

³ Comments of Competitive Telecommunications Association, p. 4.

Comprehensive monitoring and reporting procedures are necessary to reverse this condition.

As GSA explained in its Comments, end users have a direct stake in all activities to monitor and report access to OSS because interconnecting carriers must receive high quality services from the incumbent LECs in order to provide high quality services to their own customers.⁴ The proposed monitoring and reporting system contains measures that will accomplish this goal.⁵

State regulators confirm the need for OSS standards. For example, the Public Utility Commission of Texas reports a detailed analysis of the proposed reporting system.⁶ This agency concludes:

[M]easurements will assist incumbents, new entrants and regulators in evaluating an incumbent's performance in meeting its statutory obligations.⁷

Also, the Public Utilities Commission of Ohio provides extensive comments supporting comprehensive rules to assess whether an incumbent LEC is providing access to OSS, as well as interconnection, on a nondiscriminatory basis.⁸

The New York State Department of Public Service ("NYDPS") provides a strong endorsement grounded specifically on its own experience. The NYDPS described how it is now using performance measurements and reporting procedures that are consistent with those suggested in the NPRM.⁹ The agency previously developed the

4 GSA Comments, p. 7.

5 *Id.*

6 Comments of the Public Utility Commission of Texas ("PUCT") and Attachment to PUCT Comments.

7 Comments of the PUCT, p. 1.

8 Comments of the Public Utilities Commission of Ohio.

9 Letter to the Secretary of the Commission from the General Counsel of the Public Service Commission of the State of New York, May 29, 1998.

procedures for implementation on a trial basis in the period January through December 1998.

Competitive LECs stress the importance of implementing procedures to obtain data on potential access to OSS at the earliest possible time. As Teleport Communications explains, the absence of OSS reporting requirements on incumbent LECs leaves to competitive carriers the obligation to gather the data necessary to determine whether an incumbent carrier has met its statutory obligation.¹⁰ "Such an assignment of responsibilities turns the statute on its head."¹¹

Without exception, competitive LECs advocate even more stringent procedures than proposed by the Commission. In addressing this point, the Competitive Telecommunications Association explains that model performance measurements and reporting requirements as suggested in the NPRM do not go far enough in enforcing compliance with the Telecommunications Act.¹²

The experience of competitive carriers needing access to the incumbent carriers' OSS provides ample support for GSA's recommendation that the requirements be viewed as the minimum acceptable level on a mandatory basis after an initial period, such as a year.¹³ The Commission's rules should be employed as the default in states that do not act to adopt a similar set of measures and requirements within that time.

Incumbent LECs provide the only comments disputing the need for detailed reports on OSS access. In summary, these firms contend that:

¹⁰ Comments of Teleport Communications Group, Inc. ("Teleport Communications"), p. 4.

¹¹ *Id.*

¹² Comments of the Competitive Telecommunications Association, p. 3.

¹³ Comments of GSA, p. 14.

places minimal and justifiable requirements on the incumbent LECs.²³ In fact, Teleport Communications proposes additional measures to extend the proposed reporting system to encompass unbundled network elements ("UNEs").²⁴ Also, Teleport Communications advocates adding a number of measurements to better ensure that a LEC is not discriminating against its competitors.²⁵

It is significant that actual experience with the operation of the similar systems to measure and report on OSS access in New York state has apparently been successful so far. The NYDPS cites no complaints by incumbent carriers concerning "burdens" of the system during the five months of the trial period preceding the agency's submission to the Commission.

GSA has explained that it is necessary to recognize the needs of all carriers to employ their resources efficiently.²⁶ However, it is also important to consider the scope of the resources and infrastructure under the control of the incumbent LECs in evaluating the "burdens" of reporting systems that will help more competition to develop.²⁷

The Commission should fully credit the needs of end users and competitive carriers in balancing the burdens and benefits of comprehensive reports. Competitors need consistent standards to participate in local markets, while end users need them to receive high quality telecommunications services from any carrier. These

²³ Comments of Teleport Communications, pp. 5-15.

²⁴ *Id.*, p. 21.

²⁵ *Id.*

²⁶ Comments of GSA, p. 10.

²⁷ *Id.*

considerations must weigh heavily in balancing the burdens and benefits of a performance measurement and reporting system.

B. Geographically disaggregated reports are necessary to effectively measure competitors' access to OSS.

GSA recommended in its Comments that performance measurement and reporting should be geographically disaggregated to the LATA or Non-Associated Independent Area level.²⁸ Reports by state would not be sufficiently detailed. Valuable information would be lost by combining data for regions with little actual competition with data for regions where more competition has developed.²⁹

Incumbent LECs claim that reports, if any, should employ broader geographical averages. For example, BellSouth contends that it does not even disaggregate data beyond the state level for its own retail operations.³⁰ According to BellSouth, such disaggregation would require "extensive modifications" to its systems and processes."³¹ In any event, BellSouth contends that the modifications necessary for disaggregation would have little practical benefit for competitive local exchange carriers because these carriers can access the raw data underlying the performance reports in BellSouth's warehouses.³²

Clearly, by BellSouth's own admission, disaggregated data is collected and retained in the warehouses. This incumbent LEC simply does not want to go to the trouble and expense of offering this information to its actual or potential competitors.

²⁸ *Id.*, p. 12.

²⁹ *Id.*

³⁰ Comments of BellSouth Corp., p. 16.

³¹ *Id.*

³² *Id.*

In contrast, GSA has explained that the incumbent LECs are accustomed to presenting information by LATA, because LATAs have been used to define their areas of operation for the last 15 years.³³ LATAs and Non-Associated Independent Areas generally correspond with extended metropolitan areas or communities of interest, except in the least populated states where geographical precision has reduced importance.³⁴

Carriers requiring access to the incumbents' infrastructures concur with GSA that state boundaries do not provide a satisfactory level of disaggregation. For example, Sprint Corporation notes that statewide reporting is too broad to identify instances of potential discrimination, unless an incumbent LEC serves only a small portion of a state.³⁵ Sprint explains that if competition exists only in certain parts of a state, an incumbent LEC may be giving far better service in those areas in order to gain a competitive advantage. Statewide reporting would mask geographical disparities in the LEC's service levels.³⁶

Furthermore, Sprint is in a unique position to comment objectively on the need for geographically disaggregated information because of its dual role as an interexchange carrier planning to compete in local markets and as a parent organization of local exchange carriers³⁷. From this perspective, Sprint recommends that the Commission require each incumbent carrier to "report using the same geographic units that its uses internally with respect to its own retail business, as long

³³ Comments of GSA, p. 12.

³⁴ *Id.*

³⁵ Comments of Sprint Corporation ("Sprint"), p. 7.

³⁶ *Id.* and n. 7.

³⁷ At page 2 of its comments, Sprint states that its long distance division is certificated to provide local service as a competitive carrier in 44 states, while its operations as an incumbent carrier include provision of seven million access lines in 18 states.

as those units are at least as large as an exchange, but smaller than a state or LATA.”³⁸ Moreover, Sprint notes that its own local exchange carriers already maintain data in geographic units smaller than a state.³⁹

Another competitive carrier, Allegiance Telecom, also urges the Commission to require geographically disaggregated reporting. Allegiance recommends that reports be based on a geographic level no larger than the Metropolitan Statistical Area (“MSA”).⁴⁰ Furthermore, data should be reported separately for each jurisdiction if an MSA encompasses two or more states.⁴¹

In support of its recommendation for this reporting detail, Allegiance Telecom raises an important point in addition to the wide differences in competition from area-to-area. Allegiance Telecom notes that a carrier’s performance in providing access to OSS depends strongly on the experience and skill of the personnel assigned to a particular locality or office.⁴² Work teams typically have responsibility for more than one locality or central office, but they rarely cover areas greater than an MSA.⁴³ Because an incumbent carrier’s ability to provide access to its OSS depends strongly on the capabilities of its field and office staff, it is important that the level of reporting be small enough to permit detection of discriminatory conduct on a local basis, even if it is unintentional.⁴⁴

38 Comments of Sprint, p. 7, emphasis supplied.

39 *Id.*, p. 7.

40 Comments of Allegiance Telecom, Inc., p. 15.

41 *Id.*

42 *Id.*

43 *Id.*

44 *Id.*, p. 16.

GSA finds these arguments persuasive and now supports performance measurement by MSA.

IV. CONTRARY TO ASSERTIONS BY INCUMBENT LECs, THE COMMISSION HAS AUTHORITY TO ADOPT THE PROPOSED PROCEDURES.

Several LECs contend that the Commission does not have the authority to adopt the monitoring and reporting procedures described in the NPRM. However, this position is soundly discredited in comments by competitive LECs.

BellSouth claims that the Commission has no statutory authority to set performance measures for local services because regulation of these services has been traditionally reserved to the states.⁴⁵ Furthermore, BellSouth asserts that the Eighth Circuit court has held that section 251 of the Telecommunications Act gives the Commission no authority to regulate local service except in six specific areas, none of which are applicable here, citing the recent case where the court reviewed a decision by the FCC concerning interconnection procedures.⁴⁶

As an another example, the United States Telephone Association ("USTA") asserts that the Commission should have released its model rules in an informal paper, thereby avoiding the potential for litigation over the Commission's jurisdiction regarding implementation issues.⁴⁷ Moreover, USTA concurs with BellSouth that the Commission's model rules are not enforceable because of the court's ruling in the case mentioned above.⁴⁸

⁴⁵ Comments of BellSouth Corp., p. 2.

⁴⁶ *Id.*, citing *Iowa Utils. Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) at 794 and n.10, *writ of mandamus issued* 135 F.3d 535 (8th Cir. 1998), *cert granted* 118 S.Ct. 879 (Jan. 16, 1998).

⁴⁷ Comments of United States Telephone Association, p. 16.

⁴⁸ *Id.*

The analysis of the Eighth Circuit court's decision presented in comments by LCI International Telecom Corp. ("LCI") convincingly rebuts claims that the Commission does not have the requisite authority.⁴⁹ LCI explains that the court's decision in fact reaffirms the Commission's authority by specifically upholding the regulations that implement the statutory requirement for nondiscriminatory access to unbundled network elements and resale services.⁵⁰ Moreover, LCI observes that the court has affirmed the Commission's determination that OSS is an unbundled element.⁵¹ Since the Telecommunications Act gives all interconnecting carriers access to each other's unbundled network elements, and since it would be impossible to monitor compliance with the legislation without an efficient system, monitoring and reporting is clearly necessary to meet the statutory requirements.

From a different perspective, the Competitive Telecommunications Association ("CTA") also explains that the Eighth Circuit court's decision presents no obstacles to the Commission's proposals. CTA states:

For all of the uncertainty created by [the Eighth Circuit court's decision], one thing that remains clear is that the Congress vested the Commission with authority to require nondiscriminatory access to OSS *and* to enforce its rules implementing Section 251 of the Act.⁵²

Furthermore, CTA foretells that competition will be delayed unnecessarily if the Commission fails to fulfill the role assigned to it by Congress.⁵³

⁴⁹ Comments of LCI International Telecom Corp. ("LCI"), pp. 7-8.

⁵⁰ *Id.*

⁵¹ *Iowa Utils. Bd. v. FCC, supra* at 808.

⁵² Comments of Competitive Telecommunications Association, p. 10 (*italics in original*).

⁵³ *Id.*

V. UNIFORM NATIONAL STANDARDS ARE PREFERABLE TO RULES DEVELOPED THROUGH NEGOTIATED AGREEMENTS OR INDUSTRY ORGANIZATIONS.

A. Reliance on negotiated agreements will produce a hodgepodge of standards.

Bell Atlantic contends that the Commission should not issue uniform standards for measuring OSS access capabilities.⁵⁴ Several additional incumbent LECs express a similar view — performance measurements for OSS access should be negotiated between carriers, with arbitration by state regulators if necessary.⁵⁵ Moreover, according to Bell Atlantic, since performance measurements established in this way will almost certainly vary from the Commission's proposed measurements, it is not appropriate to establish any standards for analysis of data using statistical techniques or other procedures.⁵⁶

Proposals by these incumbent carriers to rely on negotiated agreements conflict directly with the need for the orderly development and implementation of rules that will foster open competition. An *ad hoc* approach will produce a hodgepodge of regulations that will be confusing to interconnecting carriers (who usually serve several regions), to end users (who often require local services from multiple carriers in multiple regions), and to Federal and state regulators.

As GSA explained in its Comments, uniform standards concerning access to the telecommunications infrastructure are critical for end users such as the FEAs, who enter into contracts to obtain their local telecommunications services in many locations throughout the nation.⁵⁷ In fact, all geographically dispersed end users must be able

⁵⁴ Comments of Bell Atlantic, pp. 8-11.

⁵⁵ See, for example, Comments of Ameritech, p. 9.

⁵⁶ Comments of Bell Atlantic, p. 9.

⁵⁷ Comments of GSA, p. 7.

to anticipate uniform service quality in every state, as well as timely invoices and uniform ordering formats, independent of interconnection or other arrangements between local exchange carriers.⁵⁸

B. Deferral to industry organizations will needlessly delay monitoring and reporting.

GTE states that the Commission should only establish a general framework whereby incumbent LECs would file periodic reports on performance criteria with their carrier customers and "perhaps" other entities, such as states.⁵⁹ GTE asserts that the Commission should not act to set specific rules or procedures at the present time. Instead, an industry forum with representation of incumbent LECs and their competitors should "study" these issues.⁶⁰

GSA disagrees with this recommendation. As Allegiance Telecom explains, the ability to monitor and measure an incumbent LEC's performance in provisioning OSS to competitive carriers is integral to the competitors' ability to serve its customers.⁶¹ GSA strongly urges the Commission to avoid further delay while an industry forum studies the issues.

Furthermore, GSA strongly disagrees with GTE's suggestion that dissemination of the relevant information should be restricted to the incumbent LEC's own customers, and (possibly) state regulators. As GSA explained in its Comments, the Commission should establish procedures that require the incumbent LECs to make the reports publicly available.⁶² This procedure would provide information to all competing

⁵⁸ *Id.*

⁵⁹ Comments of GTE, p. 12.

⁶⁰ *Id.*

⁶¹ Comments of Allegiance Telecom, Inc. p. 1.

⁶² Comments of GSA, p. 15.

carriers as well as to firms seeking to evaluate the opportunities for obtaining services from an incumbent carrier, even if they are not actually doing so at the present time. Potential competitors also require an estimate of their future ability to access the infrastructure — as measured by the access actually accorded present competitors — in order to make an informed decision on whether to consider offering services in that area at all.⁶³

Moreover, as GSA noted in its Comments, end users also have a significant stake in the quality of access that incumbent LECs provide to their competitors.⁶⁴ When an end user uses a competing carrier that is receiving inferior access, the end user will receive poor service in turn. Furthermore, an end user using an incumbent carrier will not be better off. The incumbent LEC will ultimately provide lower quality service to its own retail customers if competition cannot develop because potential new providers do not have efficient access to the local telecommunications infrastructure.⁶⁵

VI. SEVERAL PARTIES SUGGEST WAYS TO INCREASE COMPLIANCE AND EXPAND THE VALUE OF OSS REPORTING.

In its Comments, GSA recommended that the Commission include a system for incorporating the performance measures discussed in the NPRM in price cap plans.⁶⁶ GSA explained that integration of performance measurements with price caps will

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*, pp. 16-18.

increase the incentives for incumbent LECs to offer high quality OSS access to their competitors.⁶⁷

Several other parties suggest additional features to increase compliance with any performance standards that are adopted. For example, MCI states that reports will have minimum utility unless competitive local exchange carriers have access to the underlying data and a right to audit the incumbent's performance.⁶⁸ MCI observes that these features are essential because of the incentives for incumbent carriers to shade results to avoid illuminating discriminatory practices.⁶⁹

Allegiance Telecom states that regulators should retain the right to access reports by incumbent LECs and to examine the underlying data.⁷⁰ Allegiance states that competitive LECs should be given the same rights, subject to reasonable restrictions.

GSA supports the recommendations by these carriers for permission to audit OSS reports and review the underlying data. Indeed, GSA urged the Commission to require the incumbent LECs to make the reports publicly available.⁷¹ This procedure would make information on OSS access available to end users as well as other carriers.

Allegiance Telecom offers an additional recommendation which should increase the value of the OSS access reports. The Commission has proposed that incumbent LECs provide separate reports for four groups of users: (1) the LEC's own

⁶⁷ *Id.*, p. 16.

⁶⁸ Comments of MCI, pp. 31-33.

⁶⁹ *Id.*, p. 33.

⁷⁰ Comments of Allegiance Telecom, p. 1.

⁷¹ Comments of GSA, p. 15.

retail customers; (2) any LEC affiliates that provide local exchange service; (3) competing carriers in the aggregate; and (4) individual competitive carriers. Allegiance suggests that a fifth group be added — the LEC's 10 largest retail customers.⁷²

The largest retail customers are most comparable to competitive carriers in requiring significant volumes of telecommunications services and functionalities, often at multiple locations. Thus, Allegiance observes, it is more valuable to compare the incumbent's provision of service to competitive carriers with the provision of service to this group of large retail customers (as opposed to all retail customers generally). Moreover, Allegiance notes that this modification should not be unduly burdensome because some incumbent carriers have already agreed, in negotiated or arbitrated interconnection agreements, to provide information regarding their level of service to this fifth group of users.⁷³

GSA supports the recommendation by Allegiance Telecom because the additional category will expand the amount of information available from the OSS reports.

⁷² Comments of Allegiance Telecom, pp. 10-11.

⁷³ *Id.*, p. 11, citing Bell Atlantic Interconnection Agreement with AT&T for the State of New Jersey, Attachment 12.

VII. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to adopt and implement a measurement and reporting system for OSS and the other elements of the incumbent carriers' infrastructure as discussed in these Reply Comments.

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